

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RAUL TALAVERA,

Plaintiff,

v.

Case No. 22-cv-395

**HELLEN TAPIA, HOMEGOODS, INC., A
FOREIGN PROFIT CORPORATION and
WRI NORTH TOWNE, LLC, A FOREIGN
LIMITED LIABILITY COMPANY,**

Defendants.

NOTICE OF REMOVAL

COME NOW Defendants HomeGoods, Inc. (“HomeGoods”) and Kimco Realty (“Kimco”), successor in interest of WRI North Towne, LLC, by and through counsel, Lewis Brisbois Bisgaard & Smith LLP (Dominique C. Oliver and Jill M. Collins), and pursuant to the provisions of 28 U.S.C. §1441, hereby removes Cause Number D-202-CV-2022-00563, filed in the Second Judicial District Court, County of Bernalillo, State of New Mexico. As grounds for removal, Defendants state the following:

I. INTRODUCTION AND BACKGROUND

1. On February 1, 2022, Plaintiff filed his Complaint alleging personal injury and damages.
2. Defendants HomeGoods and Kimco were served with Plaintiff’s Complaint on March 11, 2022. Defendant Hellen Capilla was served with Plaintiff’s Complaint on March 25, 2022. Counsel for Plaintiff granted Counsel for Defendants an extension of 30 days to answer the Complaint (*see Exhibit A*). Therefore, Pursuant to 28 U.S.C. § 1446(b) this Notice of Removal is timely filed.
3. Pursuant to 28 U.S.C. § 1332, this action is removable as the amount in controversy exceeds

seventy-five thousand dollars (\$75,000) as Plaintiff alleges damages in medical expenses, future medical expenses, loss of income and income opportunity, loss of household services, property damage, loss of life's enjoyment, and emotional and physical pain and suffering; and because complete diversity of citizenship of the parties exists.

Diversity of Citizenship Exists Between the Parties

4. Plaintiff is a resident of Bernalillo County, State of New Mexico. *Paragraph 1 of Complaint.*

5. HomeGoods, is a Delaware corporation with its principal place of business in Massachusetts. Kimco is a Maryland corporation with its principal place of business in New York.

6. Defendant Hellen Capilla, incorrectly identified as "Helen Tapia" in Plaintiff's Complaint, was not employed at HomeGoods on September 26, 2020, the date of the alleged incident which is the subject of the Complaint. Ms. Capilla began her employment with HomeGoods on October 16, 2020 (*see Exhibit B, Declaration of Hellen Capilla*); and therefore was fraudulently joined.

6. Attached hereto as Exhibit C are the pleadings filed to date in the state court action:

Complaint, filed 2/01/2022;

Certificate of Arbitration, filed 2/01/2022;

Certificate of Service of Process to HomeGoods Inc., Proof of Mailing, filed 3/11/2022;

Certificate of Service of Process to WRI North Towne LLC, Proof of Mailing, filed 3/11/2022; and

Certificate of Service of Process to Helen Tapia, Proof of Mailing, filed 3/25/2022.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Dominique C. Oliver

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*Attorneys for Defendants HomeGoods, Inc. and
Kimco Realty, formerly WRI North Towne, LLC*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed with the court this 23rd day of May, 2022, causing counsel of record to be electronically served.

/s/ Dominique C. Oliver

Dominique C. Oliver